**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| **MICHAEL R. HANSON and KAREN M. HANSON, Trustees of The HANSON LIVING TRUST,** | ) | **No. 29665-2-III** |
| **Appellants,** | ) | |
| **v.** | ) | |
| **DIAMOND LAND COMPANY, LLC, an Idaho Limited Liability Company,** | ) | |
| **Defendant,** | ) | |
| **ROBERT J. TULLY and PAMELA TULLY, husband and wife; JAMES AGUIRRE and SUZETTE AGUIRRE, husband and wife; GLEN RICHEAL and LINDA RICHEAL, husband and wife; KYLE D. SPITZER and TAMIE N. SPITZER, husband and wife,** | ) | **Division Three** |
| **Respondents,** | ) | |
| **JON L. HOADLEY and CARLIE R. HOADLEY, husband and wife; JEFF ELLERSICK and DIANE ELLERSICK, husband and wife; DANIEL R. McREYNOLDS and PAIGE L. McREYNOLDS, husband and wife,** | ) | |

**Defendants.** ) **UNPUBLISHED OPINION**

Korsmo, J. — The trial court quieted title in a contested beach front access, known as Lot 6, on the grounds that the lienholder conveyed its interest in the lot via a platting document. We affirm.

FACTS

The land in question is on the east side of Diamond Lake in Pend Oreille County. Southshore Diamond Lake Road is located south and east of the property. Additional land owned by the Hanson Living Trust (Hanson) is south of that road. U.S. Highway 2 runs adjacent to the additional Hanson land on the south and east.

In April 2006, Hanson sold six acres of land to Diamond Land Company, LLC (Diamond) by way of real estate contract.[1] The contract stated that Lots 1-11, Block C, Elu Beach, and Lot 2 of Hanson Division, were immediately released from its terms. The "Replat of Lots 1-4 of Block C of Elu Beach" a final plat, was filed in May 2006 and contained four separate lots. Neither appellant Hanson nor "Lot 6" are mentioned on that plat.

Lot 6 was created by way of a final plat of "Diamond Beach" that was filed in June 2006. Hanson signed the plat as a lienholder consenting to the subdivision. The

[1] Diamond is no longer in existence and was defaulted by the trial court in September 2010.

face of the plat contains a note titled "Lot 6." It states:

> (1) Designated as a community access lot only for "Hanson Division—Lot 2", "Replat of Lots 1-4 of Block 'C' of Elu Beach." "Lots 5-11 of Block 'C' of Elu Beach" and Mike and Karen Hanson.
> (2) No residential structures permitted on Lot 6. Community Pavilion type structures shall be permitted.
> (3) No vehicle access to Southshore Diamond Lake Road permitted.

Clerk's Papers (CP) at 353. The lots benefitted by subsection one are not a part of the plat.

The respondents are property owners who separately purchased lots from Diamond. In addition to their own lots, each of them was given a 1/27 interest in a common area also known as Lot 6. Diamond eventually defaulted on its contractual obligation to Hanson and voluntarily forfeited its interest in Lot 6 and other unsold lots through a quitclaim deed. As a result, Hanson received a 15/27th interest in Lot 6.

In May 2010, Hanson filed a suit to quiet title, alleging that it owned Lot 6 in its entirety. The trial court granted summary judgment in favor of the respondent property owners on the basis that Hanson's signature on the plat of Diamond Beach conveyed its interest in Lot 6 to the properties and parties stated on the plat. This appeal timely followed.

## ANALYSIS

The sole issue in this appeal[2] is whether the trial court erred in granting summary judgment after determining that the final plat of "Diamond Beach" constituted a conveyance of Lot 6. Hanson asserts that, because there was no dedication on the plat, it did not create any benefits or interest to others.

Appellate courts review a summary judgment order *de novo*. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment should be granted where the evidence shows no genuine issue of material fact and the moving party is entitled to the judgment as a matter of law. CR 56(c). Mere allegations or conclusory statements of fact without supporting evidence fail to establish the existence of a genuine issue. *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). The facts are viewed in a light most favorable to the nonmoving party. *Vallandigham v. Clover Park School Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

The Legislature has provided that:

> Every final plat or short plat of a subdivision or short subdivision filed for record must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision or short subdivision has been made with the free consent and in accordance with the desires of the owner or owners.

[2] In light of our disposition, we do not reach the respondents' alternative argument that they are bona fide purchasers.

> If the plat or short plat is subject to a dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat or short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.
>
> Every plat and short plat containing a dedication filed for record must be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.
>
> An offer of dedication may include a waiver of right of direct access to any street from any property, and if the dedication is accepted, any such waiver is effective. Such waiver may be required by local authorities as a condition of approval. Roads not dedicated to the public must be clearly marked on the face of the plat. *Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees for his, her or their use for the purpose intended by the donors or grantors as aforesaid.*

RCW 58.17.165 (emphasis added).

Hanson argues that, since statutes are to be taken in context, the emphasized language refers only to dedications because that is the topic of the preceding language. While Hanson is correct that statutes are to be read in their surrounding context, that argument actually serves to cut against its position. It is precisely *because* the Legislature spoke largely in terms of dedications that the emphasized language carries importance,

for if the Legislature had intended to speak solely in terms of dedications, it would not have used the word "dedication," followed by the words "donation" and "grant." *See* RCW 58.17.165. The fact that the Legislature used three distinct terms emphasizes its intent to provide multiple methods by which a plat may act as a quitclaim deed. The plain language of the statute provides that while a plat may dedicate land, it may also create interests by way of donation or grant, any of which serves as a quitclaim deed to relinquish interest in land. *Id.* The narrow question here is therefore whether the plat at issue was sufficient to act as a quitclaim deed to Lot 6, thereby divesting Hanson of its interest in the lot.

When construing a plat, the intent of the dedicator controls; intent is gleaned from the marks and lines appearing on the plat. *Roeder Co. v. Burlington N., Inc.*, 105 Wn.2d 269, 273, 714 P.2d 1170 (1986). It is only where a plat is ambiguous that parol evidence may be used. *Id.* "A written instrument is ambiguous when its terms are uncertain or capable of being understood as having more than one meaning." *Murray v. W. Pac. Ins. Co.,* 2 Wn. App. 985, 989, 472 P.2d 611 (1970). Here, neither party contends that the plat is ambiguous; accordingly, this court will look to the face of the plat to settle the issue before it. *Roeder Co.*, 105 Wn.2d at 273.

As an initial matter, the parties agree that the "Lot 6" language on the plat is not a

dedication. They are correct since a dedication is, by definition, land given to the *public* for its use. *City of Spokane v. Catholic Bishop of Spokane,* 33 Wn.2d 496, 503, 206 P.2d 277 (1949). Such is not the case with the "Diamond Lake" plat. The "Diamond Lake" plat states that Lot 6 is designated as community access *only* for "Hanson Division—Lot 2, Replat of Lots 1-4 Block 'C' of Elu Beach, Lots 5-11 of Block 'C' of Elu Beach, and Mike and Karen Hanson." CP at 353. The limited nature of this designation means that it is not a dedication since it was not given to the public, but rather to a small group of properties and individuals. *Catholic Bishop of Spokane*, 33 Wn.2d at 503.

The parties draw differing conclusions from this point. Hanson argues that it remains the sole owner of Lot 6 because no conveyance could occur absent a dedication. Respondents argue that the question regarding dedications is irrelevant under RCW 58.17.165 because the statute contemplates donations and grants, which need not be public in nature, and contemplates that those mechanisms also may act as a quitclaim deed, as the plat here did. We agree with the respondents.

The highlighted language of RCW 58.17.165 establishes that the designation in question operates as a quitclaim deed since it is shown on the face of the plat and vests interest rights in the designated parties. *See, e.g.*, *M.K.K.I., Inc. v. Krueger*, 135 Wn. App. 647, 145 P.3d 411 (2006), *review denied*, 161 Wn.2d 1012 (2007). In Washington,

a quitclaim deed operates as a good and sufficient conveyance of all legal and equitable rights of the grantor in a given property. RCW 64.04.050; *McCoy v. Lowrie*, 44 Wn.2d 483, 486, 268 P.2d 1003 (1954).

Hanson understood and anticipated that the document would have this operative effect since it expressly designated access rights for Mike and Karen Hanson by name, something that there was no need for if Hanson had retained ownership interest in the lot. CP at 353. Finally, as acknowledged in its briefing, Hanson consented to the plat by means of the lienholder's certificate on the face of the document. Since Hanson expressly consented to the plat, it can have no qualms about the designation of Lot 6 as a community access property. It likewise can claim no interest other than that expressly granted at the time the plat was filed, and that vested in the land which Diamond returned to Hanson. Accordingly, the trial court properly granted summary judgment. There is no genuine issue of material fact because the plat language operated as a conveyance per RCW 58.17.165.[3]

[3] In a final attempt to raise a genuine issue that would preclude summary judgment, Hanson points to the "question of fact" as to whether it has received sufficient compensation that would merit a release under the real estate contract. However, this argument presumes that payment is a necessary condition prior to a security release. Nothing in the contract precludes Hanson from releasing its security interest prior to payment in full if it chooses to do so. Further, as pointed out by the Respondents, Hanson received the benefit of consenting to the plat, as it increased the value of the other lots in which it held a security interest by providing them with waterfront access.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Siddoway, J.